

STATE OF MICHIGAN
COURT OF APPEALS

JANICE REARDON,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant.

UNPUBLISHED

June 10, 2004

No. 246561

Wayne Circuit Court

LC No. 02-210769-NO

Before: Sawyer, P.J., and Gage and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right from a circuit court order denying its motion for summary disposition premised on governmental immunity. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was walking down a sidewalk in the city when she tripped over a barricade that had been erected to control the flow of traffic. She fell and sustained injuries. Plaintiff brought suit against the city alleging it is liable for her injuries.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion premised on immunity granted by law is properly considered under MCR 2.116(C)(7). "This Court reviews the affidavits, pleadings, and other documentary evidence submitted by the parties and, where appropriate, construes the pleadings in favor of the nonmoving party. A motion brought pursuant to MCR 2.116(C)(7) should be granted only if no factual development could provide a basis for recovery." *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

A governmental agency having jurisdiction over a highway is liable in tort for breach of the duty to "maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." MCL 691.1402(1). The agency's duty is to keep the highway in reasonable repair and to perform repair work as necessary to keep the highway in reasonable repair. *Jones v Enertel, Inc*, 467 Mich 266, 268; 650 NW2d 334 (2002); *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 160; 615 NW2d 702 (2000). To recover under the highway exception, the plaintiff must show that her injuries were proximately caused by a defect in the sidewalk itself. *Haliw v Sterling Heights*, 464 Mich 297, 308-311; 627 NW2d 581 (2001).

There is no evidence that plaintiff's injuries were proximately caused by a defect in the sidewalk that was in need of repair; thus, plaintiff failed to establish that defendant breached its duty to maintain the sidewalk in reasonable repair. While plaintiff contends that the presence of the barricade made the sidewalk unsafe, making the highway reasonably safe for public travel is the desired outcome of keeping the highway in reasonable repair; the agency does not have a duty to keep the highway reasonably safe. *Nawrocki, supra*. Accordingly, we find that the trial court erred in denying defendant's motion for summary disposition.

Reversed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens